

MONTSTREAM & MAY, L.L.P.

ATTORNEYS AT LAW
SALMON BROOK CORPORATE PARK
655 WINDING BROOK DRIVE
POST OFFICE BOX 1087
GLASTONBURY, CONNECTICUT 06033-6087

FRANK A. MAY *
DAVID A. KELLY *
MICHAEL J. FINN *
DOMINICK C. STATILE *
JOSEPH J. PASSARETTI, JR. *
MARGARET E. CRAWFORD *

LISA A. BUNNELL
KAREN A. ACQUARULO *
MARIE E. GALLO-HALL *
MELISSA A. MURELLO *
ADAM J. LaFLECHE
MATTHEW S. NECCI
BRIDGET M. CIARLO
KRISTIN A. BONNEAU
JOHN L. O'BRIEN

TEL (860) 659-1341
FAX (860) 657-8519
E-MAIL ADDRESS:
email@montmaylaw.com

www.montmaylaw.com

APRIL HASKELL
(Retired)

* Board Certified Workers'
Compensation Specialist

March 18, 2009

Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

RE: H.J. No. 73 (Barbara Mader v. State of Connecticut)

Dear Senator McDonald, Representative Lawlor and Members of the Committee:

Please accept this written testimony in connection with your consideration of the above-referenced matter. We respectfully submit that the decision of the Claims Commissioner should be vacated. In lieu thereof, the Claims Commissioner should be ordered to make payment to Mrs. Mader in the amount of \$20,000, or she should be authorized to sue the state. Doing so will serve a legitimate public purpose.

This matter concerns a surgical procedure performed at the UConn Health Center on April 10, 2007. While Mrs. Mader was in recovery a nurse negligently placed a hot pack directly on the bare skin of her upper back, which resulted in a burn. It is documented in the hospital's records.

As demonstrated by her Affidavit (enclosed herewith), Mrs. Mader initially expected that the burn caused by the hot pack would heal if she allowed it sufficient time. That expectation was justified by the healing she saw initially. Consequently, and because she is not the litigious type, she gave it time and saw no reason to pursue a claim. Yet when in the fall of 2007 the wound had not fully healed she decided to consult a doctor. On December 20, 2007, she was advised by a dermatologist that the burn left her with a permanent scar, including a permanent loss of pigmentation. It is only then, during that first visit with her doctor, that she reasonably discovered the injury that is the sole basis of this claim, namely the permanent scar left by the burn.

Mrs. Mader filed her Notice of Claim on October 15, 2008. The state then moved to dismiss it contending that it should have been filed no later than April 10, 2008 pursuant to C.G.S. §4-148. That statute provides in pertinent part that "no claim shall be presented under this chapter but within one year after it accrues. Claims . . . shall be

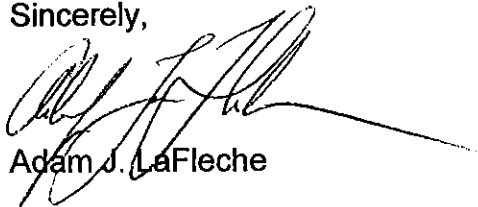
Judiciary Committee
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deemed to accrue on the date when the . . . injury is sustained or discovered **or** in the exercise of reasonable care should have been discovered . . .” (Emphasis added) The Claims Commissioner granted the state’s motion on December 12, 2008. There was no hearing and no testimony was taken.

The Claims Commissioner’s factual determination of when Mrs. Mader should have discovered her injury “in the exercise of reasonable care” and filed her claim is incorrect and unfair. Despite the fact that this claim was filed well within one year of when Mrs. Mader first consulted with her dermatologist and discovered the injury for which she seeks damages the Claims Commissioner has punished her for exercising prudence and for not rushing to commence litigation against the state unnecessarily. The suggestion that this was not an “exercise of reasonable care” is incredible, and it is difficult to conceive that a judge or jury of Mrs. Mader’s peers would agree with it. Indeed, the message being sent by the Claims Commissioner is the wrong message to send to the public. The Claims Commissioner is telling all potential claimants to rush to suit against the state, even for potentially baseless claims, thereby discouraging them from exercising the prudence and patience exercised by Mrs. Mader and likely occupying much of the Claims Commissioner’s time with premature and/or baseless claims.

We thank you for your consideration of this matter, and look forward to the hearing on March 20, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam J. LaFleche', with a long horizontal flourish extending to the right.

Adam J. LaFleche

Enclosure (Ex. A)

cc Robert D. Silva
Attorney General's office
Barbara Mader

FILE NO. 21659 : STATE OF CONNECTICUT
BARBARA MADER : OFFICE OF CLAIMS
COMMISSIONER
VS. :
STATE OF CONNECTICUT : DECEMBER 4, 2008

AFFIDAVIT OF BARBARA MADER

I, **Barbara Mader**, being duly sworn and upon personal knowledge depose and state as follows:

1. I am over eighteen (18) years of age.
2. I believe in the obligations of an oath.
3. I am the claimant in the above-captioned matter.
4. On April 10, 2007, I underwent a left shoulder arthroplasty performed by Dr. Kevin Shea at the UConn Health Center.
5. Following the surgery, while I was in recovery, a nurse placed a hot pack on the bare skin of my upper back.
6. The hot pack caused a burn.
7. Following my discharge from the hospital the burn began to slowly heal. It continued to slowly heal thereafter; and I expected that it would fully heal over time.
8. Believing that the burn would fully heal, I saw no reason to pursue any

sort of claim against the hospital.

9. In approximately November or December of 2007, I became concerned when the burn had not fully healed, so I requested an appointment with my dermatologist, Dr. Robert Greenberg.

10. During my appointment with Dr. Greenberg on December 20, 2007, he informed me that he believed the burn caused permanent scarring, including a complete loss of the pigmentation in my skin, which would not fully heal, and would require special sun protection for the rest of my life.

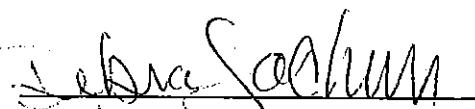
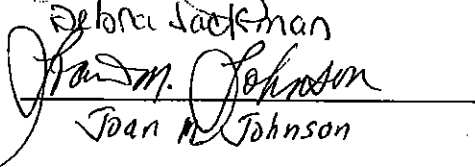
11. I was upset by what Dr. Greenberg told me, and decided to retain a lawyer shortly thereafter. However, at no time prior to my appointment with Dr. Greenberg did I believe I had reason to pursue a claim against the hospital.

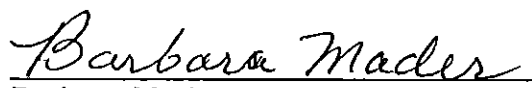
12. All of the foregoing statements are true to the best of my knowledge and belief.

Signed this 5th day of December, 2008.

Witnesses:

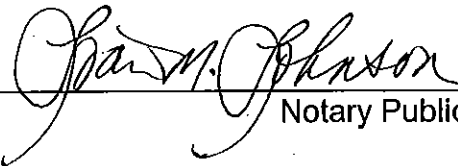
Affiant:


Debra Jackman

Joan M. Johnson


Barbara Mader

CONNECTICUT
COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF HARTFORD) ss.: Manchester December 5, 2008

Personally Appeared **Barbara Mader**, signer of the foregoing Instrument, and
acknowledged the same to be her free act and deed, before me.


Notary Public

JOAN M. JOHNSON
NOTARY PUBLIC
MY COMMISSION EXPIRES: 7/31/2011

MY COMMISSION EXPIRES: 7/31/2011